

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding in Title 45.1 a chapter numbered 14.7:2, containing articles numbered 1 and 2, consisting of sections numbered 45.1-161.311:3 through 45.1-161.311:8, relating to establishing a trust for coal interests.

[S 1308]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 45.1 a chapter numbered 14.7:2, containing articles numbered 1 and 2, consisting of sections numbered 45.1-161.311:3 through 45.1-161.311:8, as follows:

CHAPTER 14.7:2.

TRUST FOR COAL INTERESTS.

Article 1.

Unknown Coal Owners.

§ 45.1-161.311:3. *Petition to establish a trust for missing coal owners.*

A. Any person or persons or lessee with greater than 50 percent interest in coal on a particular tract, who is seeking to impress a trust upon unknown or missing owners of such tract of coal, may petition the circuit court in the county or city containing the majority of the tract to establish a trust to protect the interests of all coal owners and lessees.

B. The petition shall:

1. List all known owners, missing owners and unknown interests and set forth the efforts to locate and identify the unknown or missing owners of the interests in the tract of coal and such other information known to the petitioner that may be helpful in identifying or locating the present owners thereof; and

2. Include the proposed terms of a lease to be offered to the trust, which lease shall be typical of other arms-length leases in the area.

C. The petitioner shall establish to the satisfaction of the court that a diligent effort has been made to identify and locate the present owners of such interests.

§ 45.1-161.311:4. *Advertisement upon filing of petition.*

Immediately upon filing of the petition, the petitioner shall advertise a notice of the pending action, including a statement that the action is brought for the purpose of impressing a trust authorizing the execution of a valid and present coal lease for the development of a tract of coal described in the petition. Such notice shall appear in a local newspaper of general circulation once a week for two consecutive weeks.

§ 45.1-161.311:5. *Court may declare trust; trustee sale of lease.*

A. If, upon presentation to the circuit court of the petition, it appears to the court that development of the interests in the tract of coal will be advantageous to the unknown or missing owners, the court shall declare a trust in the coal interests, and shall appoint a trustee for such interests. The court shall authorize the trustee to execute a lease covering the coal interests in the identified tract of coal. The order of the court shall provide for all the terms and provisions of the lease that the trustee is authorized to make.

B. The trustee shall proceed in compliance with the provisions of the order to execute the lease, and after executing the lease shall submit a report thereof to the court.

C. The court shall not authorize a trustee's lease upon the coal interests of any owner whose identity and whereabouts is known, or can be ascertained, or is discovered as a result of the action brought under this article. Any such owner may intervene as a matter of right at any time prior to the judgment approving the trustee's lease, for the purpose of establishing his title to the coal interests. If the coal owner's claim is established to the satisfaction of the court, the court shall dismiss the action at plaintiff's cost.

§ 45.1-161.311:6. *Duty of trustee; sale of lease; distribution of funds.*

A. The trustee shall collect the proceeds from the sale of the lease and hold and invest such proceeds for the use and benefit of the unknown or missing owners. The court may authorize the trustee to expend an amount not to exceed 10 percent of the funds collected by the trustee for the purpose of searching for the unknown or missing owners.

B. Five years after the date of first commercial production of the coal interests the proceeds in the trust shall be disposed of pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et

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57 *seq.).*

58 *§ 45.1-161.311:7. Payment of attorney's fees, expenses, and court costs.*

59 *All attorney's fees, expenses, and court costs incident to the original proceedings shall be paid by the*
60 *lessee if a lease is executed, and by the plaintiff if for any reason no lease is executed. Subsequent to*
61 *entry of judgment, all allowable fees, expenses, and court costs shall be paid out of funds controlled by*
62 *the trustee.*

63 *Article 2.*

64 *Known Coal Owners.*

65 *§ 45.1-161.311:8. Production of coal by majority interest owner; petition to establish trust for known*
66 *coal owners.*

67 *A. Any person or persons or lessee with at least two-thirds interest in coal on a particular tract of*
68 *land, who is seeking to extract such coal, may petition the circuit court in the county or city containing*
69 *the majority of the tract to establish a trust.*

70 *B. The petition shall:*

71 *1. List all known owners; and*

72 *2. Include the proposed terms of a lease to be offered to the minority owners, which lease shall be*
73 *typical of other arms-length leases in the area.*

74 *C. The petitioner shall establish to the satisfaction of the court that a diligent effort has been made*
75 *to obtain the minority owners' consent to lease their interest in the coal. The petitioner shall*
76 *demonstrate to the court that (i) production of the coal by the petitioner's lessee is of economic benefit*
77 *to all parties, (ii) if the coal is not produced, then the economic value of the coal is lost and the*
78 *economic benefit of owning the coal is decreased, and (iii) there is no practical method for dividing*
79 *such coal among the owners without extracting the coal.*

80 *D. Immediately upon filing the petition, the petitioner shall send by registered or certified mail, with*
81 *a return receipt requested, notice of the petition to the party subject to the petition.*

82 *E. The court may appoint a trustee and authorize the trustee to execute a lease pursuant to*
83 *§ 45.1-161.311:5.*

84 *F. The court shall escrow or direct the trustee to escrow the proceeds of the lease attributable to the*
85 *minority interests until such time as the minority owner's claim is established to the satisfaction of the*
86 *court.*